



JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

### Division of Oil, Gas & Mining

MICHAEL R. STYLER  
*Executive Director*

JOHN R. BAZA  
*Division Director*

November 30, 2007

#### CERTIFIED RETURN RECEIPT

7002 0510 0003 8603 4063

Vern Tharp  
Moss Rock Products, LLC  
5040 Acoma Street  
Denver, CO 80216

Subject: Proposed Assessment for Cessation Order MC07-01-15, Moss Rock Products, LLC, Klingon Rock Operations, S/049/060, Utah County, Utah

Dear Mr. Tharp:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Lynn Kunzler, on November 1, 2007. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-2007-01-15- \$1,650

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made.

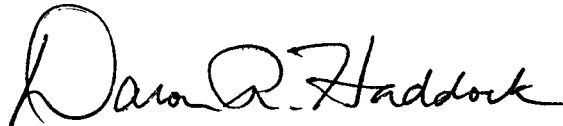
1

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or appointed Conference Officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the final assessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock  
Assessment Officer

DRH/pb  
Enclosure: Worksheet  
cc: Vickie Southwick, Exec. Sec.  
Vicki Bailey, Accounting  
P:\GROUPS\MINERALS\WP\M049-Utah\S0490060-KlingonRock\non-compliance\MC-07-01-15\proAssessment-ltr.doc

**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Moss Rock Products, LLC/ Klingon Rock PERMIT M0490060  
NOV / CO # MC-07-01-15 VIOLATION 1 of 1

ASSESSMENT DATE November 30, 2007

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

*Mining without appropriate approvals/ Environmental Harm/ Damage  
to Property*

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*** *An Operator is required to file a notice of intention to commence mining operations with the Division of Oil Gas and Mining prior to conducting mining operations. While a Notice of Intent has been filed with the Division for a small mine, the Operator has not provided a reclamation surety for this property nor received final approval to operate. A small area has been disturbed at this location without the operator having obtained approval to do so or posting a bond. Rock and mineral material has been excavated from the site using mechanized equipment and some rock has been hauled from the site. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 5

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*** *The inspector stated that the Operator was removing rock from the site. Approximately 1 acre had been disturbed at the time of the inspection. Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed. There is potential for sediment to leave the site, but no evidence of impacts off the site was directly observed. The disturbed area is relatively small and the potential for damage is considered minor because the excavation is small and done near the surface. Points are assigned in the lower part of the range.*

**B. ADMINISTRATIVE VIOLATIONS (Max 25pts)**

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

**TOTAL SERIOUSNESS POINTS (A or B) 25**

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

**ASSIGN NEGLIGENCE POINTS 10**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector indicated that the operator had been aware of the need to permit this site, however, for some reason the permitting process had not been completed. While the NOI may have been complete, a bond was never posted. A prudent operator would understand the need to complete the permit and post a bond prior to conducting mining operations. This indicates indifference to the rules or lack of reasonable care. The Operator should have been aware of the requirements, especially since this same issue came up in 2006 at the adjacent Barney Mine. The Barney mine is being mined by the same individual that is mining on the Klingon Property and both mines have the same land owner. The indifference to the rules indicates negligence, thus the assignment of points in the mid to upper part of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20\*  
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10  
(Permittee used diligence to abate the violation)

- Normal Compliance 0  
(Operator complied within the abatement period required)  
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS --

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *The abatement for this violation is considered difficult because plans and surety were required to be posted. However, at this point no good faith points can be awarded because the abatement has not been completed. This category will be looked at again, once the abatement has been completed.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-07-01-15</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>25</u>
III. TOTAL NEGLIGENCE POINTS	<u>10</u>
IV. TOTAL GOOD FAITH POINTS	<u>          </u>
TOTAL ASSESSED POINTS	<u>35</u>
TOTAL ASSESSED FINE	<u>\$ 1,650</u>

U.S. Postal Service

# CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

PB

11/30/07

SO490060

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(Endorsement Required)

Restricted Delivery Fee  
(Endorsement Required)

Proposed  
Assessment

Postmark

\$1650 here

Total Postage

Sent To

Street, Apt. 1  
or PO Box N

City, State, Z

VERN THARP

MOSS ROCK PRODUCTS

5040 ACOMA ST

DENVER CO 80216

7002 0510 0003 8603 4063

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- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

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- Certified Mail may **ONLY** be combined with First-Class Mail or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry.**